

HARLOW H. OBERBILLIG

IBLA 81-398

Decided September 1, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring millsite claims abandoned and void. I MC 39686 and I MC 39687.

Reversed and remanded.

1. Millsites: Generally -- Mining Claims: Abandonment -- Mining Claims: Millsites -- Mining Claims: Recordation

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976), to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

APPEARANCES: Harlow H. Oberbillig, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Harlow H. Oberbillig has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated February 4, 1981, declaring the Protest No. 1 Millsite and Protest No. 2 Millsite "mining claim[s]", I MC 39686 and I MC 39687, abandoned and void for failure to file timely evidence of annual assessment work or notices of intention to hold the claims.

It is apparent from the record that appellant's claims were treated by BLM as mining claims. However, a review of the record indicates that they are, in fact, millsite claims. On October 22, 1979, appellant filed

with BLM notices of location for the claims entitled "Location Notice and Certificate of Mill Site," for tracts of land "not exceeding five acres." The claims were located on March 10, 1963. On appeal, appellant states that the millsites are "the location of a quartz milling facility."

[1] The applicable regulation, 43 CFR 3833.2-1(d), provides:

[T]he owner of a mill or tunnel site located on Federal lands \* \* \* shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

In his statement of reasons for appeal, appellant contends that section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), only provides with respect to millsites for the "initial recordation" of the notice of location, "which if not done constitutes abandonment."

There is no evidence that appellant filed notices of intention to hold the millsite claims pursuant to 43 CFR 3833.2-1(d) prior to December 30, 1980. Appellant did file notices of intention to hold on October 22, 1979. Appellant, however, was required to file "each year following the year of recording." 43 CFR 3833.2-1(d).

Nevertheless, we recently held in Feldslite Corp. of America, 56 IBLA 78, 88 I.D. 643 (1981), that the failure to file annually a notice of intention to hold a millsite claim will not result in the automatic extinguishment of the claim. Rather, citing Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), we concluded:

[U]pon the failure of a millsite claimant to file an annual notice of intention to hold, BLM should notify the claimant of this deficiency and afford the claimant a period of time in which to comply with the regulatory requirement. Should compliance not then occur, the millsite will properly be declared abandoned and void. We note that such a procedure both advances the Department's desire to be kept informed as to the status of claims on the public domain, and provides a mechanism for millsite owners to cure filing inadvertencies which might otherwise have proved fatal.

Feldslite Corp. of America, supra at 82-83, 88 I.D. at 646. This should be the approach here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded to BLM for further action not inconsistent herewith.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

